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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERT ROWEN,
Plaintiff(s),

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a foreign
corporation; ABC CORPORATIONS I-X,
inclusive; BLACK & WHITE
COMPANIES I-X, inclusive; JOHN DOES
I-X, inclusive,

CASE NO.: 3:18-cv-00009-LRH-WGC

**DEFENDANT STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY'S ANSWER TO
PLAINTIFF'S COMPLAINT**

JURY DEMAND REQUESTED

COMES NOW, Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY, by and through its counsel, the law firm of ATKIN WINNER & SHERROD, and
in response to Plaintiff's Complaint on file herein admits, denies and alleges as follows:

PARTIES & JURISDICTION

1. In answering the allegations of Plaintiff's Complaint, Paragraph 1, Defendant alleges that it is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of said allegations and on that basis therefore denies same. Defendant will hold Plaintiff to all proofs.
2. In answering the allegations of Plaintiff's Complaint, Paragraph 2, Defendant admits the

allegations therein.

3. In answering the allegations of Plaintiff's Complaint, Paragraph 3, Defendant alleges that it is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of said allegations and on that basis therefore denies same. Defendant will hold Plaintiff to all proofs.
4. In answering the allegations of Plaintiff's Complaint, Paragraph 4, Defendant alleges that it is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of said allegations and on that basis therefore denies same. Defendant will hold Plaintiff to all proofs.
5. In answering the allegations of Plaintiff's Complaint, Paragraph 5, Defendant alleges that it is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of said allegations and on that basis therefore denies same. Defendant will hold Plaintiff to all proofs.

FACTS

6. In answering the allegations of Plaintiff's Complaint, Paragraph 6, Defendant restates and realleges its responses to Paragraph 1 through 5 inclusive, and incorporates the same as though fully set forth in full herein.
7. In answering the allegations of Plaintiff's Complaint, Paragraph 7, Defendant admits the allegations therein.
8. In answering the allegations of Plaintiff's Complaint, Paragraph 8, Defendant admits the allegations therein.
9. In answering the allegations of Plaintiff's Complaint, Paragraph 9, Defendant admits the allegations therein.
10. In answering the allegations of Plaintiff's Complaint, Paragraph 10, Defendant admits the allegations therein.
11. In answering the allegations of Plaintiff's Complaint, Paragraph 11, Defendant admits

1 that Plaintiff notified Defendant of the accident on May 13, 2015. As to the remaining
2 allegations of Plaintiff's Complaint, Paragraph 11, Defendant alleges that it is without
3 sufficient knowledge or information necessary to form a belief as to the truth or falsity of
4 said allegations and on that basis therefore denies same. Defendant will hold Plaintiff to
5 all proofs.

6 12. In answering the allegations of Plaintiff's Complaint, Paragraph 12, Defendant admits
7 that Plaintiff notified Defendant of the accident on May 13, 2015. As to the remaining
8 allegations of Plaintiff's Complaint, Paragraph 12, Defendant alleges that it is without
9 sufficient knowledge or information necessary to form a belief as to the truth or falsity of
10 said allegations and on that basis therefore denies same. Defendant will hold Plaintiff to
11 all proofs.

12 13. In answering the allegations of Plaintiff's Complaint, Paragraph 13, Defendant alleges
13 that it is without sufficient knowledge or information necessary to form a belief as to the
14 truth or falsity of said allegations and on that basis therefore denies same. Defendant will
15 hold Plaintiff to all proofs.

16 14. In answering the allegations of Plaintiff's Complaint, Paragraph 14, Defendant alleges
17 that it is without sufficient knowledge or information necessary to form a belief as to the
18 truth or falsity of said allegations and on that basis therefore denies same. Defendant will
19 hold Plaintiff to all proofs.

20 15. In answering the allegations of Plaintiff's Complaint, Paragraph 15, Defendant alleges
21 that it is without sufficient knowledge or information necessary to form a belief as to the
22 truth or falsity of said allegations and on that basis therefore denies same. Defendant will
23 hold Plaintiff to all proofs.

24 **FIRST CAUSE OF ACTION (Breach of Contract)**

25
26 16. In answering the allegations of Plaintiff's Complaint, Paragraph 16, Defendant restates
27 and realleges its responses to Paragraph 1 through 15 inclusive, and incorporates the
28

1 same as though fully set forth in full herein.

2 17. In answering the allegations of Plaintiff's Complaint, Paragraph 17, Defendant admits the
3 allegations therein.

4 18. In answering the allegations of Plaintiff's Complaint, Paragraph 18, Defendant alleges
5 that it is without sufficient knowledge or information necessary to form a belief as to the
6 truth or falsity of said allegations and on that basis therefore denies same. Defendant will
7 hold Plaintiff to all proofs.

8 19. In answering the allegations of Plaintiff's Complaint, Paragraph 19, Defendant alleges
9 that it is without sufficient knowledge or information necessary to form a belief as to the
10 truth or falsity of said allegations and on that basis therefore denies same. Defendant will
11 hold Plaintiff to all proofs.

12 20. In answering the allegations of Plaintiff's Complaint, Paragraph 20, Defendant alleges
13 that it is without sufficient knowledge or information necessary to form a belief as to the
14 truth or falsity of said allegations and on that basis therefore denies same. Defendant will
15 hold Plaintiff to all proofs.

16 **AFFIRMATIVE DEFENSES**

17 **FIRST AFFIRMATIVE DEFENSE**

18 That the Complaint and each and every cause of action purported to be set forth therein,
19 fails to allege facts sufficient to state a claim against Defendant upon which relief can be granted.
20

21 **SECOND AFFIRMATIVE DEFENSE**

22 This answering Defendant alleges that Plaintiff failed and refused to take reasonable steps
23 to remedy, cure or mitigate his damages as alleged in the Complaint, and is therefore now barred
24 from any recovery in the present action as a result of and to the extent of such failure and refusal.
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26 **THIRD AFFIRMATIVE DEFENSE**

27 The incident involved herein and any resulting injuries or damages, if any, were caused
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1 or contributed by acts and/or omissions of third parties over whom Defendant had no control.

2
3 **FOURTH AFFIRMATIVE DEFENSE**

4 The complaint, and each cause of action thereof, is barred on the grounds that
5 Defendant's materials and/or conduct referred to in the complaint were not a substantial factor in
6 bringing about the injuries and damages complained of by Plaintiff.

7
8 **FIFTH AFFIRMATIVE DEFENSE**

9 Defendant hereby requests a credit in the amount of any advanced sums of money, if any,
10 either to or on behalf of Plaintiff prior to trial in this action.

11
12 **SIXTH AFFIRMATIVE DEFENSE**

13 Plaintiff's claims are barred, in whole or in part, by the doctrine of prevention of
14 performance.

15
16 **SEVENTH AFFIRMATIVE DEFENSE**

17 Defendant alleges that Plaintiff's injuries, medical conditions, and/or damages, if any, are
18 unrelated to the incident which is the subject of this litigation and/or are pre-existing in that such
19 medical conditions, injuries, and/or damages, if any, were caused separately and independently
20 from or began prior or subsequent to the time of the subject incident. Such medical conditions,
21 injuries, and/or damages, if any, are, in their entirety, separate from and unrelated to the incident
22 alleged in Plaintiff's Complaint.

23
24 **EIGHTH AFFIRMATIVE DEFENSE**

25 Defendant denies that any act or omission to act on this answering Defendant's part, or
26 any act or omission to act on the part of any person or entity for whose acts or omissions this
27 answering Defendant is or may be established to be legally responsible or liable, actually or
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1 proximately caused or contributed to in any manner or to any degree, any injuries, damages or
2 losses, if any, for which recovery is sought by Plaintiff.

3
4 **NINTH AFFIRMATIVE DEFENSE**

5 Some or all of Plaintiff's medical treatment and expenses were neither reasonable nor
6 necessary.

7 **TENTH AFFIRMATIVE DEFENSE**

8 Defendant alleges that at all time herein its conduct has been motivated by the utmost
9 good faith to its insured.

10 **ELEVENTH AFFIRMATIVE DEFENSE**

11 Plaintiff's claims are barred because of its failure to satisfy conditions precedent,
12 concurrent and/or subsequent to recovery under the contract.

13
14 **THIRTEENTH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims are barred due to the failure of consideration.

16
17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 Plaintiff's claims are barred, in whole or in part, by the doctrine of unjust enrichment.

19
20 **FIFTEENTH AFFIRMATIVE DEFENSE**

21 Plaintiff is equitably estopped from asserting any claims against Defendant.

22
23 **SIXTEENTH AFFIRMATIVE DEFENSE**

24 Defendant alleges that there has been a failure of a condition precedent to recovery under
25 the subject policy in that Plaintiff failed to demonstrate that the tortfeasor driver was
26 uninsured/underinsured.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that if Plaintiff has been or will be compensated for his damages, if any, by other parties, and/or other insurance benefits coverage, Defendant is entitled to a credit or offset in that amount.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that any verdict rendered against Defendant must be apportioned between injuries directly caused by the incident alleged in Plaintiff's Complaint and other medical conditions which may have predated or occurred subsequent to the accident alleged.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by Plaintiff's own material breaches of the contract.

TWENTH AFFIRMATIVE DEFENSE

If Defendant failed to perform any valid obligation owed to Plaintiff, which Defendant expressly denies, then there existed a legal excuse for such non-performance.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by Defendant's anticipatory breach and/or repudiation of the contract.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of accord and satisfaction.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Pursuant to the Federal Rule of Civil Procedure 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after

1 reasonable inquiry upon the filing of the Defendant's Answer, and therefore, Defendant reserves
2 the right to amend this Answer to alleges additional affirmative defenses if subsequent
3 investigation warrants.

4
5 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

6 That it has been necessary for Defendant to employ the services of an attorney to defend
7 this action and a reasonable sum should be allowed Defendant as and for attorney's fees, together
8 with its costs expended in this action.

9
10 WHEREFORE this answering Defendant prays that said Plaintiff take nothing by reason
11 of the complaint and the causes of action therein contained, and that this answering Defendant
12 does have and recovers judgment for costs incurred and for such other and further relief as the
13 court may be deemed proper

14 [NOTE: Some or all of the affirmative defenses above pled may have been pled for
15 purposes of non-waiver pending discovery. Other affirmative defenses may be added as
16 discovery continues.]

17 DATED this 19th day of January, 2018.

18 ATKIN WINNER & SHERROD

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